THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

Writ Petition No.3826 of 2003

ORDER:

1 Petitioner Company, which is engaged in manufacture and sale of telecommunication cables and other allied products, having suffered financial crunch, applied to the Board for Industrial and Financial Reconstruction (BIFR), under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (the Act) for rehabilitation scheme which was registered as case No.505 of 2002 under Section 3 (O) of the Act. Second respondent filed an arbitration dispute for recovery of Rs.1,41,88,524/- towards interest for non payment of principal amount of Rs.4,85,420/- under the provisions of The interest on delayed payment to Small Scale and Ancillary Industrial Undertaking Act, 1993 (1993 Act), which was registered as reference No.29/3/3/106 dated 7.2.2003, which is pending before the first respondent.

2 Alleging that the first respondent cannot proceed with the claim made by the second respondent in view of Section 22 of the Act, petitioner filed this writ petition seeking a direction to the first respondent not to proceed with the adjudication of the claim of the second respondent till the second respondent obtains consent from the BIFR in case No.505 of 2002.

3 The contention of the learned counsel for the petitioner is that since the petitioner approached the BIFR seeking rehabilitation under the provisions of the Act in view of Section 22 of the Act all legal proceedings against the petitioner should remain suspended till the consent of the BIFR or the appellate authority is obtained and since

the second respondent did not obtain the consent of the BIFR or the appellate authority for proceeding against the petitioner, the claim made by the second respondent before the first respondent is liable to be stayed. It is his contention that though Section 10 of the 1993 Act lays down that provisions of that Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, in view of Section 32 of the Act the provisions of the Act should be deemed to prevail over the provisions of the 1993 Act by relying on ***Jay Engineering Works Ltd Vs. Industry Facilitation Council and another***[1]***.***

4 The contention of Sri P.Venu Gopal, appearing on behalf of counsel for the second respondent, is that merely because a case is registered before the BIFR, the provisions of Section 22 of the Act are not automatically attracted and since there is nothing on record to show that enquiry under section 16 of the Act is pending, there is no need to stay the proceedings. He relied on ***Real Value Appliances Ltd Vs. Vardhman Spinning & Gen. Mills Ltd***[2] in support of his said contention.

5 In Real Value Appliances case (2 supra) it is held that an enquiry under Section 16 (1) must be treated as having commenced as soon as registration of the reference is completed after scrutiny and from that time onwards action against the Company's assets must remain stayed, as stated in Section 22, till final decision is taken by BIFR and that the word 'inquiry' used in Section 16(1) includes investigation into facts.

6 I am unable to agree with the contention of Sri P.Venu Gopal

that inasmuch as the petitioner did not produce any material to show that the BIFR has taken cognizance of the case, Section 22 of the Act is not attracted because Regulation No. 19(5) of Board for Industrial and Financial Reconstruction Regulations, 1987 reads:

> If on scrutiny, the reference is found to be in order, it shall be registered, assigned a serial number and submitted to the Chairman or assigning it to a Bench. Simultaneously, remaining information/ documents required, if any, shall be called for from the informant.

and as the apex court in Real Value Appliances case (2 supra) held that the effect of the amended Regulation 19 (5) is that even before any Bench of the BIFR can think of calling for information under Regulation 20 (1) or under Regulation 21 read with section 16, it is now mandatory, after the amendment, that as soon as a reference is registered, information /documents shall be called for from the informant straightway, and inasmuch as inquiry under section 16 includes investigation, 'inquiry' under Section 16 of the Act must be deemed to have commenced at that stage itself, namely, at stage of the second part of Regulation 19(5) and so it is not permissible to say that such a stage is reached only when the BIFR issues notices and starts an inquiry under Regulation 20 calling for additional information in relation to the enquiry, or only when orders are passed by the BIFR under Regulation 21 read with Section (1). For that reason and since the affidavit filed in support of the writ petition shows that BIFR registered a case as case No.505 of 2002 by accepting that the petitioner has complied with the requirements of Section 3 (O) of the Act, it is clear that BIFR commenced 'inquiry' in the claim of the

petitioner.

7 In Jay Engineering Works case (1 supra) the apex Court considered the provisions of the Act and 1993 Act and held that the provisions of the Act would prevail over the provisions of the 1993 Act and so the proceedings initiated by the second respondent against the petitioner have to be stayed till the second respondent obtains consent from the BIFR as contemplated by Section 22 of the Act.

8 Therefore, the writ petition is allowed and the proceedings before the first respondent in reference No.29/3/3/106 dated 7.2.2003 initiated by the second respondent against the petitioner shall remain stayed till the second respondent obtains consent from the BIFR in case No.505 of 2002. Parties are directed to bear their own costs.

Justice C.Y.Somayajulu

25-10-2007

kvsn

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[1] (2006) 8 Supreme Court Cases 677

[2] AIR 1998 Supreme Court 2064